



POLICE DEPARTMENT

June 1, 2009

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Kenyon Leggett  
Tax Registry No. 921068  
Forensic Investigations Division  
Disciplinary Case No. 83866/08  
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The above-named member of the Department appeared before me on February 17, 2009, charged with the following:

1. Said Sergeant Kenyon Leggett, assigned to the Forensic Investigations Division, on or about October 20, 2006, while on duty, within the confines of the Forensic Investigations Division, did not follow proper procedures for processing the intake of vouchered narcotics property, to wit: Patrol Borough Brooklyn South's bag of vouchered narcotic evidence, by placing said property in an area that was unauthorized for the storage of vouchered narcotics.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Sergeant Kenyon Leggett, assigned to the Forensic Investigations Division, on or about October 20, 2006, while on duty, within the confines of the Forensic Investigations Division, having taken property, to wit: Patrol Borough Brooklyn South's bag of vouchered narcotic evidence into custody, did thereafter fail and neglect to properly safeguard said property, in that said sergeant placed said property in an area that was unauthorized for the storage of vouchered narcotics, ultimately causing said property to become misplaced and lost.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

The Department was represented by Katie O'Connor, Esq., Department Advocate's Office, and the Respondent was represented by Philip Mellea, Esq.

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The Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

### DECISION

The Respondent, having pleaded Guilty, is found Guilty as charged.

### SUMMARY OF EVIDENCE IN MITIGATION

The Respondent, an 11-year member of the Department, was assigned to the Police Laboratory, part of the Forensic Investigations Division. He had been a sergeant since August 2003, and had worked in the Forensic Investigations Division since 2004, November, he believed.

The Respondent explained the procedure in the Police Laboratory concerning the intake of narcotics evidence. He testified that normally a precinct puts its narcotics evidence in a plastic bag and takes it to the borough. A messenger, who is a uniformed member of the Department, then transports six to twelve of the bags from the borough in one big bag to the Respondent's command. Any one of the Department members assigned to the Police Laboratory then brings the big bag from the hallway into a control room, where the bag is opened and the evidence is inspected.

When asked how it is determined who will bring the bag from the hallway into the control room, the Respondent replied, "Whoever is closest to the door or whoever feels like getting up gets the next bag."

On October 20, 2006, the Respondent was working the midnight tour. He stated that he did not recall picking up a bag on that date, but video recording shows that it was him. He was prompted to watch the video when, six weeks later, he learned that there were narcotics missing. The video showed the Respondent accepting a bag of narcotics from the messenger. The Respondent believed he then placed the bag on the floor, where it could have been mistaken for a bag of garbage at the end of the night. The Respondent indicated that he left empty narcotics bags on the control room floor to be discarded.

The Respondent testified that it was his responsibility to ensure that at some point the narcotics got on the table and were "broken down." He explained that the "breaking down" process entailed taking the narcotics out of the big bag and comparing the vouchers against the transmittal list to make sure that all of the evidence from each individual precinct was accounted for. Bar code stickers are placed on the evidence. The process requires the input of several members of the service, giving the room the appearance of an assembly line. The drugs that need to be analyzed are set aside for the lab to test during the day tour. At the end of the process, receipts are given to the messenger. The messenger used to wait in the hall, but now comes into the room to observe.

On the videotape of the day in question, the Respondent testified, it appears that the messenger left without being given the receipts for the delivery. The Respondent testified that had one of his subordinates, or the desk officer at the borough who is supposed to verify the receipts, let him know of a problem with the receipts, he would have immediately initiated a search.

The Respondent testified that when he ultimately learned of the missing narcotics, he started an immediate investigation and did everything he could to be helpful. He called the

Internal Affairs Bureau himself. He stated, "I didn't want to cause the Department embarrassment. We lost a lot of narcotics that night. Cases got thrown out. There was a federal case that got jeopardized." He continued, "But realize, there were plenty of safeguards in place. I am relying on other people to do their job, if they do their job. I was solely the one who brought the drugs into the room. I am relying on those people."

On cross-examination, the Respondent denied that there was a rule that only one bag at a time be brought from the hallway into the control room, although that is what they did "in practice." He stated that had he brought a second bag into the room, and realized it was not getting broken down, he "should have said listen there is another bag that needs to be broken down." The Respondent testified that he did not have any recollection of what happened to the bag, and said that he might have handed it to another officer.

The Respondent testified that there was no specific spot in the control room where the big bags were supposed to be placed. "You could say maybe two or three bags were laying on the floor," but in a "place where they would be easily seen."

The Respondent contended that if the messenger had said, "I don't have any receipts . . . we know there is a problem." Another supervisor, Sergeant Adam Schneider, was also present. They were the highest-ranking Department members present.

### PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Department on June 30, 1998. Information from his personnel folder that

was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty, after pleading Guilty and testifying in mitigation of the penalty, of failing to follow proper procedures for processing the intake of vouchered narcotics evidence and failing to properly safeguard it, resulting in its loss. The Department requested a penalty of 30 vacation days, noting the consequences here of the Respondent's failure. On summation, the Respondent argued that lost property cases generally result in the loss of 10 to 15 days: "You can check every case that comes out of this court. Missing property cases are 10 to 15. Every one of them. It is a rule that every time you lose property, then it is 15 days."

The Respondent's argument finds some support. For instance, in Disciplinary Case No. 83634/08, a Central Booking sergeant was penalized 15 vacation days for failing to safeguard marijuana that a police officer had found on a prisoner. The sergeant left the marijuana on his desk in an area where many people, including non-members of the Department, passed by. In Disciplinary Case No. 78184/02, the penalty was reduced to 10 vacation days from 20 by the Police Commissioner, for a police officer who failed an integrity test. An undercover officer posing as a livery cab driver approached the officer and his partner with a briefcase, which the "driver" said had been left in his cab by a passenger. The Police Commissioner noted the officer's good record and commanding officer's comments, and reduced the penalty in light of "his lapse in judgment."

What makes the Respondent's admitted misconduct stand out is that his sole responsibility appears to have been intake evidence control at the Police Laboratory. The point of the evidence control room is to ensure that when the borough messenger delivers the "big

bag” of narcotics evidence, the bag gets broken down and the drugs are logged and distributed for testing if necessary. The Respondent was a supervisor in this regard. For him to accept one of these big bags and cavalierly place it on the floor was an unacceptable failure for such an important responsibility. Notably, the misconduct resulted in the dismissal of several criminal cases because the drugs were lost. It is no excuse that others failed to do their jobs; as a supervisor, the control of the evidence was ultimately the Respondent’s job. Even if the messenger had gotten a receipt, the big bag was lost *after* the Respondent took it from the messenger.

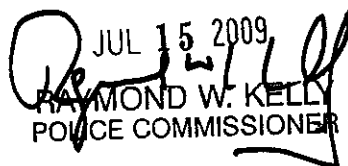
The instant case, therefore, requires a greater penalty than what the Respondent’s attorney suggested was the standard. On the other hand, the Department provided no precedent in support of its recommendation that the penalty be 30 vacation days. In light of the Respondent’s exemplary work and disciplinary history, the Court recommends a penalty of 25 vacation days.

Respectfully submitted,



David S. Weisel  
Assistant Deputy Commissioner – Trials

**APPROVED**

JUL 15 2009  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
SERGEANT KENYON LEGGETT  
TAX REGISTRY NO. 921068  
DISCIPLINARY CASE NO. 83866/08

In 2007 and 2008, the Respondent received an overall rating of 5.0 “Extremely Competent” on his annual performance evaluation. In 2006, he was rated 4.5 “Extremely Competent/Highly Competent.” [REDACTED]

[REDACTED] He has no prior formal disciplinary record.

For your consideration.



David S. Weisel  
Assistant Deputy Commissioner – Trials